

Service Date: February 4, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of the Application)	UTILITY DIVISION
of U S WEST Communications for)	DOCKET NO. 88.1.2
a General Rate Increase.)	ORDER NO. 5354g

FINAL ORDER

1. In Order No. 5354d, the Commission found that the parties concerned with affiliated interest standards, U S WEST Communications (USWC) and the Montana Consumer Counsel (MCC), should attempt to develop standards and reporting requirements for affiliated interest transactions by August 15, 1989. After several requests for additional time the parties filed a Stipulation and Report of U S WEST Communications and Montana Consumer Counsel Regarding Affiliate Interest Issues. The stipulation was dated May 31, 1990, and was signed by Dennis Lopach and Mary Wright. A copy of the stipulation is attached to this Order as Attachment A.

2. On July 27, 1990 the Commission issued a Notice of Stipulation Meeting. On August 21, 1990, pursuant to the Notice, the Commission held a stipulation meeting where USWC and MCC explained the benefits of the stipulation from their respective

points of view.

3. On February 7, 1991 the Commission issued a Notice of Commission Action which set a briefing schedule for the Affiliated Interest issues in Docket No. 88.1.2. Both parties elected to file only initial briefs.

4. On October 21, 1992 the Commission held a work session to discuss the stipulation. At that work session the Commission decided to postpone consideration of the stipulation until after January 1, 1993, because it was felt that the newly elected Commission should decide the issue.

5. On July 28, 1993 the Commission held another work session to discuss the stipulation. At that work session it was decided to wait for receipt of the Watson Report on Affiliated Interests. That report was formally presented to the Commission on November 8, 1993.

6. On December 14, 1993 the Commission held a work session to consider the stipulation. The Commission finds it proper to approve the stipulation on Affiliated Interests between USWC and MCC, and hereby closes Docket No. 88.1.2.

7. On December 14, 1993 the Commission issued a Proposed Final Order in this matter. Exceptions or briefs were due to be filed on or before January 11, 1994. The only document received

by the Commission was a letter from Mr. James B. Hayhurst, Director of USWC Montana Regulatory Relations, dated January 8, 1994, requesting that the filing date in the Stipulation be extended from April 1 to May 1 of each year, because of changes implemented by USWC after the Stipulation was signed, to allow some additional time to compile and file the data. The letter states that USWC contacted MCC, and MCC has no objection to the filings being made on May 1 of each year, instead of April 1 of each year. The Commission has no objection to this change, and will therefore adopt a filing date of May 1 in this Final Order.

CONCLUSIONS OF LAW

1. The Commission is charged with supervision and regulation of public utilities. . 69-3-102, MCA.

2. U S WEST Communications is a public utility providing regulated telecommunications service. . 69-3-101 and 69-3-803, MCA.

3. The Commission has provided adequate public notice and an opportunity to be heard herein, pursuant to the Montana Administrative Procedure Act. Title 2, Chapter 4, MCA.

ORDER

1. The stipulation between U S WEST Communications and the Montana Consumer Counsel related to Affiliated Interests is hereby approved and Docket No. 88.1.2 is closed.

2. U S WEST Communications is ordered to provide the affiliate information set forth in the Stipulation by May 1st of each year. The requirements of the Stipulation (Attachment A) are incorporated herein by this reference.

Done and Dated this 31st day of January, 1994, by a vote of
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman
(Concurring Opinion Attached)

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

OPINION OF COMMISSIONER ROWE
(Docket No. 88.1.2, Order No. 5354g)

A state utility commissioner attempting to responsibly regulate a multi-state multi-business concern is in the same position as the blindfolded person attempting to understand an elephant part-by-part. This is especially true of U S WEST, probably the most complex regulated firm in the western United States.

The Commission's order in this docket, approving a stipulation which does include reporting requirements is a good step toward gaining a better understanding of the corporation, and therefore toward more appropriately regulating those matters which come under the Commission's jurisdiction. This effort will be furthered should the Commission move to implement the recommendations contained in Docket N-93-67, the omnibus affiliate transactions study, concerning the four major multi-state utilities which do business in Montana.¹

Unfortunately, the Commission could have done even more in

¹ That report, prepared by Tim Watson, states that it is impossible for the utilities studied to have truly arms-length transactions with their affiliates, and that the magnitude of potential risk to ratepayers requires that the "no harm" to ratepayers standard for evaluating affiliate transactions be replaced with a requirement that, "but for the affiliated relationship, the utility ratepayers would be worse off." Public Utility Affiliated Transaction Review and Report (October 15, 1993), pp. I-4 to I-6. The report has been submitted to the concerned utilities for comment.

the present docket, but elected not to. The record in this case contains an extensive and detailed evaluation of U S WEST transactions with affiliates, prepared originally for the Utah Public Service Commission in 1987: Price Waterhouse, Mountain Bell Transactions With Affiliates. (Exhibit MCC-9.) The report was the subject of discovery and examination in this docket. Most of the recommendations were endorsed by the parties, including by U S WEST. (Testimony of Ruben Hernandez, Transcript, pp. 529-533.)

A series of recommendations concerned standardized planning and reporting requirements for strategic sourcing decisions, evaluation of alternatives, reporting and analysis of when it is appropriate to form an unregulated affiliate, and when it is appropriate to return affiliate functions to the parent.

Although prepared originally in 1987, the Price Waterhouse recommendations are not dated. Rather, they establish a framework for evaluating a range of possible transactions now and in the future. They compliment more than duplicate the recommendations contained in the affiliate transactions study now the subject of Docket N-93-67. Further, because the Price Waterhouse recommendations are part of a contested case record, they are available for immediate implementation as part of an order in this case. Any order which may flow from Docket N-93-67 is many months away. At the very least, the full record in the affiliat-

ed interests portion of Docket 88.1.2, including the Price Waterhouse report, should be included in any formal proceeding which may flow out of Docket N-93-67.

Most of the major issues involving U S WEST which come before this Commission in some way relate to the complex corporate structure, and corporate decisions to shift or prioritize investments in one or another part of its regulated or unregulated business. Implementing the Price Waterhouse recommendations would have afforded this Commission a rational, thorough and prompt means to assess the effects of affiliate transactions on Montana jurisdictional customers.

RESPECTFULLY SUBMITTED this 31st day of January, 1994.

BOB ROWE
Vice Chair